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4 Court-Appointed Monitor

5
6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8 EDUARDO GONZALEZ, ANTHONY)
OCAMPO, ENCARNACION GUTIERREZ,)
JOHAN MONTOYA, JUANCARLOS GÓMEZ-)
MONTEJANO, JENNIFER LU, AUSTIN CHU,)
IVY NGUYEN, ANGELINE WU, ERIC FIGHT,)
CARLA GRUBB, DAVID CULPEPPER,)
PATRICE DOUGLASS, and ROBAIR)
SHERROD, BRANDY HAWK and ANDRE)
STEELE, on behalf of themselves and all others,)

) CASE NOS.: 03-2817 SI, 04-4730 and
04-4731

) EXECUTIVE SUMMARY OF
COURT-APPOINTED MONITOR'S
THIRD ANNUAL COMPLIANCE
REPORT

12 Plaintiffs,

13 v.

14 ABERCROMBIE & FITCH STORES, INC.,)
A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
and ABERCROMBIE & FITCH)
MANAGEMENT CO.,)

17 Defendants.

18 ELIZABETH WEST and JENNIFER LU,

19 Plaintiffs,

20 v.

21 ABERCROMBIE & FITCH STORES, INC.,)
A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
and ABERCROMBIE & FITCH)
MANAGEMENT CO.,)

23 Defendants.

24 EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,

25 v.

26 ABERCROMBIE & FITCH STORES, INC.,)
A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
and ABERCROMBIE & FITCH)
MANAGEMENT CO.,)

28 Defendants.

1 **I. REQUIREMENTS OF CONSENT DECREE**

2 The Consent Decree provides for the preparation of an Executive Summary of the Court-
 3 Appointed Monitor's Annual Compliance Report. The Executive Summary should set forth "the
 4 substance of the Monitor's findings" with respect to Abercrombie's¹ compliance with the
 5 requirements of the Consent Decree for the applicable period. The Consent Decree goes on to
 6 describe the Executive Summary as follows: "The parties contemplate that the Executive
 7 Summary will reflect the Monitor's general findings in areas such as, but not limited to, training,
 8 recruitment, . . . and attainment of Benchmarks, all as more specifically covered by the Report,
 9 and the parties also contemplate that the Executive Summary will not include specific findings as
 10 to, inter alia, the numbers of applications, hires, promotions, or specific occurrences or events.
 11 By way of example, the Executive Summary's discussion of the Company's training could
 12 generally set out the Monitor's findings relative to whether the Company had or had not met its
 13 overall training objectives under the Decree over the subject reporting period, and, if not, a
 14 general statement of matters with respect to which there had been non-compliance and any steps
 15 the Company is to take to resolve such matters." What follows is the Monitor's Executive
 16 Summary of the Third Annual Compliance Report. This Executive Summary does not discuss
 17 any of Abercrombie's obligations limited to the first year following the Approval Date of the
 18 Decree.

19 **II. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MARKETING**

20 The Consent Decree requires that Abercrombie's marketing materials, taken as a whole,
 21 "reflect diversity, as reflected by the major racial/ethnic minority populations of the United
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24 ¹ This Executive Summary incorporates herein by reference the definition of "Abercrombie"
 25 contained in the Consent Decree: "'Abercrombie' or the 'Company' means Abercrombie &
 26 Fitch Stores, Inc.; A&F California, LLC; A&F Ohio, Inc.; and Abercrombie & Fitch
 27 Management Co., as well as each of their parents, subsidiaries, affiliates, officers, directors,
 28 agents, management, successors and assigns and those in active concert or participation with
 them, or any of them. The terms of [the Consent] Decree cover all stores operated by
 Abercrombie whether under the name Abercrombie & Fitch, Hollister, abercrombie, or any other
 concept operated by Abercrombie."

1 States.” The Monitor found that Abercrombie’s marketing materials during the Third
 2 Compliance Period,² taken as a whole, did not reflect diversity.

3 Abercrombie has improved the representation of Asian Americans in its marketing. The
 4 representation of African Americans and Asian Americans was at a level generally reflective of
 5 their respective representation in the United States population, although diversity was not
 6 uniform among the Abercrombie brands. Latinos remained generally underrepresented in
 7 Abercrombie’s marketing materials and across the brands. To achieve compliance with this
 8 obligation, Abercrombie should continue to include African Americans and Asian Americans at
 9 representative levels, and strive to include Latinos, in the full range of marketing materials,
 10 including in the more prominent in-store locations, so that those materials, taken as a whole,
 11 reflect diversity.

12 **III. SUBSTANCE OF MONITOR’S FINDINGS REGARDING NOTICE AND
 13 POSTING**

14 The Monitor found that a majority of stores posted Exhibit B Notices. Abercrombie did
 15 not, however, provide confirmation by District Managers that the Exhibit B Notices were posted,
 16 as expressly required by the Consent Decree. Abercrombie should seek modification of this
 17 requirement from Lead Counsel and the EEOC if the Company believes that the objectives of the
 18 posting and confirmation requirements can be attained by other means.

19 The Consent Decree also requires that Abercrombie publish the Exhibit B Notice every
 20 four months in its HR 411 Bulletin. Abercrombie’s HR 411 Bulletins containing Exhibit B
 21 Notices were not published every four months, with five months elapsing between the June 2007
 22 and November 2007 publication dates, and six months elapsing between the November 2007 and
 23 May 2008 publication dates.

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28 ² The Third Compliance Period extends from May 2007 to April 2008.

1 **IV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING EEO AND DIVERSITY**
2 **TRAINING**

3 The Monitor found that almost all managers, Salaried Exempt Employees, and Human
4 Resources Associates required to be trained under the Consent Decree received EEO and
5 Diversity Training in the Third Compliance Period. A majority of in-store managers and Human
6 Resources Associates were trained within the time periods required by the Consent Decree. A
7 minority of Salaried Exempt Employees were trained within the time periods prescribed by the
8 Consent Decree. Abercrombie did not provide sufficient data for the Monitor to make a
9 conclusion as to the proportion of Regional Managers and District Managers trained within the
10 applicable time periods. On a going-forward basis, Abercrombie should ensure that it
11 implements adequate systems to identify all employees who are due for training under the
12 Consent Decree, and that those employees are timely trained.

13 **V. SUBSTANCE OF MONITOR'S FINDINGS REGARDING INTERNAL**
14 **COMPLAINT PROCEDURE**

15 The Monitor found that, in general, Abercrombie complied with the Consent Decree's
16 requirements that it (1) commence and resolve investigations in a timely manner; (2) interview
17 relevant witnesses; (3) communicate the results of investigations to complainants; and (4) keep
18 written records of the investigatory steps taken. Abercrombie continued to publicize the Internal
19 Complaint Procedure through the Exhibit B Notices and the Associate Handbooks.

20 **VI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITMENT AND**
21 **HIRING**

22 Abercrombie trained "all involved staff" in the Company's Recruitment and Hiring
23 Protocol during the Third Compliance Period. Abercrombie did not provide sufficient data to
24 make a definite conclusion as to the proportion of "involved staff" trained within the time
25 periods required by the Consent Decree. On a going-forward basis, Abercrombie should ensure
26 that it implements adequate systems to identify whether employees are timely trained.

1 **VII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MANAGERIAL
2 PROMOTIONS**

3 Abercrombie met the Promotion Benchmarks (as defined in the Consent Decree) with
4 respect to African American, Asian American, Latino, and female managers for most managerial
5 positions. However, Abercrombie did not do so with respect to African American promotions
6 from Assistant Manager to the Store Manager/General Manager positions during either the fifth
7 or sixth six-month period. To comply with the requirements of the Consent Decree,
8 Abercrombie must renew its efforts to promote African American managers "in a proportion that
9 is no less than the specific group's proportion of the available feeder pool."

10 **VIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITERS**

11 The Monitor found that Abercrombie employed the agreed-upon number of Recruiters
12 and that Abercrombie based an adequate number of those Recruiters in major metropolitan areas,
13 as required by the Consent Decree. Abercrombie is also charged with implementing a plan to
14 ensure that its Recruiters reflect diversity in race/national origin and gender. More than half of
15 the Company's Recruiters are female. The Monitor also found that the Recruiters are diverse
16 with respect to African Americans and Asian Americans. However, the percentage of Latino
17 Recruiters remains too low to warrant a finding that the Recruiters generally reflect diversity
18 with respect to race. Abercrombie should redouble its planning efforts to ensure that the
19 Recruiters hired reflect diversity with respect to Latinos.

20 The Consent Decree requires that Abercrombie consider both external and internal
21 candidates for the Recruiter position. The Company has not yet hired an external candidate. For
22 the upcoming compliance period, Abercrombie should expand its external recruiting efforts
23 when seeking additional Recruiters and/or filling vacant Recruiter positions. Alternatively,
24 Abercrombie should seek modification of this requirement from Lead Counsel and the EEOC if
25 the Company believes that the objectives of the Recruiter provision are being attained.

1 The Consent Decree requires that Abercrombie charge the Recruiters with recruiting
2 Minority³ applicants of both genders into in-store positions. While the job description for the
3 Recruiter position includes an affirmative directive that the Recruiters recruit African Americans,
4 Asian Americans, and Latinos of both genders, certain developments during the Third
5 Compliance Period suggested that Recruiters are not spending as much time performing this
6 essential role as in prior compliance periods. Abercrombie should ensure that the Recruiters
7 remain focused on recruiting Minority applicants of both genders into in-store positions.

8 **IX. SUBSTANCE OF MONITOR'S FINDINGS REGARDING ADVERTISEMENTS**

9 The Monitor found that Abercrombie complied with the Consent Decree's requirement
10 that the Company place advertisements for in-store employment opportunities in periodicals that
11 targeted African Americans, Asian Americans, and/or Latinos of both genders.

12 **X. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MINORITY
13 RECRUITING EVENTS**

14 The Monitor found that Abercrombie attended Minority job fairs and recruiting events.
15 However, the Monitor noted that Minority job fairs and recruiting events represent only a small
16 fraction of the fairs and recruiting events that Recruiters attend overall, based on the information
17 provided in the Fifth and Sixth Semi-Annual Progress Reports.

18 **XI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DIVERSITY
19 CONSULTANT**

20 The Monitor found that Abercrombie utilized a Diversity Consultant to conduct diversity
21 and inclusion training and to aid in identifying sources of qualified Minority candidates, as
22 required by the Consent Decree.

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27 ³ This Executive Summary incorporates herein by reference the definition of "Minority"
28 contained in the Consent Decree: "Minority" means all African Americans, Asian Americans,
and Latinos."

XII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING HIRING BENCHMARKS

The Monitor found that Abercrombie complied with the requirements of the Consent Decree in terms of implementing and establishing Hiring Benchmark rates for the fifth and sixth six-month periods.

Abercrombie did not meet most Hiring Benchmarks set for the Model position for the Third Compliance Period. Table 1, below, summarizes Abercrombie's performance with respect to the Benchmarks for the Model position in the fifth and sixth six-month periods.

Table 1
Model - Achievement of Fifth and Sixth Six-Month Period Benchmarks

	Fifth Period	Sixth Period
African American	Missed	Missed
Asian American	Met	Missed
Latino	Missed	Met
African American Female	Missed	Missed
Female	Met	Met

Abercrombie met a majority of the Manager-in-Training Hiring Benchmarks set for the Third Compliance Period. Table 2, below, summarizes Abercrombie's performance with respect to the Benchmarks for the Manager-in-Training position in the fifth and sixth six-month periods.

Table 2

	Fifth Period	Sixth Period
African American	Missed	Met
Asian American	Met	Missed
Latino	Missed	Met
Female	Met	Met

XIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING COMPLIANCE MEETINGS

Abercrombie engaged in compliance meetings pursuant to the terms of the Consent Decree.

1 **XIV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING CONTENTS OF SEMI-**
2 **ANNUAL PROGRESS REPORTS**

3 Abercrombie submitted Semi-Annual Progress Reports in a timely fashion. The Semi-
4 Annual Progress Reports generally included the materials and information required pursuant to
5 the Consent Decree.

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7 Dated: September 2, 2008

Fred W. Alvarez

8

9 By: 

10 Fred W. Alvarez
11 WILSON SONSINI GOODRICH & ROSATI
12 Professional Corporation

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14 Court-Appointed Monitor

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